

## QUARTERLY REPORT ON EXTENSIONS TO TIME PERIODS WITHIN WHICH OBLIGATIONS UNDER SECTION 106 CAN BE ENTERED INTO

### **Purpose of the Report**

To provide Members with a quarterly report on the exercise by the Head of Planning of the authority to extend periods within which planning obligations can be secured by (as an alternative to refusal of the related planning application).

### **Recommendations**

**a) That the report be noted**

**b) That the Head of Planning continue to report, on a quarterly basis, on the exercise of his authority to extend the period of time for an applicant to enter into Section 106 obligations.**

### **Introduction**

The Committee, when resolving to permit an application subject to the prior entering into of a planning obligation, usually also agree to authorise the Head of Planning to extend the agreed period of time for an applicant to enter into the Section 106 obligations, if he subsequently considers it appropriate (as an alternative to refusing the application or seeking such authority from the Committee).

When this practice was first established it was envisaged that such an extension might be agreed where the Head of Planning was satisfied that it would be unreasonable for the Council not to allow for additional time for an obligation to be secured. It was recognised that an application would need to be brought back to Committee for decision should there have been a change in planning policy in the interim. It was agreed that your officers would provide members with a regular quarterly report on the exercise of that authority insofar as applications that have come to the Committee are concerned. The report does not cover applications that are being determined under delegated powers where an obligation by unilateral undertaking is being sought. It also does not include those situations where obligations are secured “in time”.

This report covers the period between 6<sup>th</sup> December 2017 (when the Committee last received a similar report) and the date of the preparation of this report (13<sup>th</sup> April 2018).

In the period since the Committee’s consideration of the last quarterly report, section 106 obligations have not been entered into by the dates referred to in Committee resolutions, or subsequent agreed extensions, and extensions have been agreed with respect to some 9 applications.

The Council needs to maintain a focus on delivery of these obligations – which can become over time just as important (to applicants) as achieving a prompt consideration of applications by Committee. In some cases applicants have however little immediate requirement to complete such obligations, being content to rest upon the resolution of the Committee. Expectations and requirements vary considerably. It is the issuing of the decision notice, rather than the consideration of the application by the Committee, which is the basis for the measurement of whether the decision has been made “in time” insofar as the speed of determination criterion for designation of poorly performing LPAs is concerned.

Furthermore Local Planning Authorities are required, as part of the Planning Guarantee, to refund any planning fee paid if after 26 weeks no decision has been made on an application, other than in certain limited exceptions, including where an applicant and the Local Planning Authority have agreed in writing that the application is to be determined within an extended period. This provides yet another reason for the Planning Service

maintaining a clear and continued focus on timeliness in decision making, instructing solicitors and providing clarification where sought.

In cases where extensions of the period within which an obligation may be secured have been considered appropriate your Officer's agreement to that has normally been on the basis of that should he consider there to be a material change in planning circumstances at any time short of the engrossment of the final document he retains the right to bring the matter back to the Planning Committee. Applicants are also requested to formally agree a parallel extension of the statutory period within which no appeal may be lodged by them against the non-determination of the application, and in most cases that agreement has been provided. An application determined within such an agreed extended period, provided that agreement is obtained prior to the expiry of the existing statutory period, is defined by the government as one that has been determined as being determined "in time".

Details of the applications involved are provided below:-

**(1) Land off Eccleshall Road, Loggerheads 16/00866/DEEM4**

This application, for outline planning permission for the erection of up to 55 dwellings, came before the Planning Committee on 2<sup>nd</sup> February 2017 (at around week 15). The resolution of the Planning Committee included a time limit for the securing, by the 3<sup>rd</sup> March 2017, of obligations relating to on-site affordable housing, the provision and long-term management of on site public open space and payment of a contribution towards education facilities.

The Section 106 agreement was not completed by the 3<sup>rd</sup> March due to delays on behalf of the Council as the Local Planning Authority in providing instructions, and accordingly it has been considered appropriate by your Officer to agree a number of further extensions to the period within which the obligations can be completed by.

There were further delays on behalf of the applicant and the County Council (as the education authority) in the last quarter and your Officer twice agreed to extend the time for the completion of the agreement. The agreement was finally completed on the 21<sup>st</sup> March and the decision notice on the application was issued "out of time" on the 4<sup>th</sup> April 2018.

The decision was issued in this case some 76 weeks after receipt of the application.

**(2) Land around Wilmot Drive Estate 17/00281/FUL**

This application for full planning permission for the erection of 276 dwellings, public open space and associated infrastructure works came before the Planning Committee at its meeting on the 18<sup>th</sup> July 2017 (at around week 15). The resolutions of the Committee inter alia required obligations be entered into securing a financial contribution of £60,000 towards a Multi-Use Games Area, an undefined sum towards off site highway works, commuted off site affordable housing payments, travel plan monitoring fee of £6,430, an agreement for the long term maintenance of on site public open space, and the review of the financial assessment of the scheme and its ability to make additional contributions, if there has been no substantial commencement within 18 months of the grant of planning permission. The resolution included the requirement that the agreement containing these obligations should be completed by the 25<sup>th</sup> August 2017.

That date passed without the obligations being secured, following delays, and your Officer agreed to extend the time within which the agreement could be completed on a number of subsequent occasions due to steady progress being made on what is a fairly complicated agreement. However, considerable progress has now been made and the wording of the agreement has been agreed and it has been circulated between the various parties. Your Officer has therefore agreed to extend the time within which the agreement could be completed by - to the 1<sup>st</sup> May.

Some 53 weeks have now passed since receipt of the application.

**(3) Land south of Market Drayton Road 17/00067/DEEM4**

This application, for outline planning permission for the erection of up to 65 dwellings with associated open space and landscaping, came before the Planning Committee on 12<sup>th</sup> September 2017 (at around week 32). The resolution of the Planning Committee included a time limit for the securing, by the 12<sup>th</sup> November 2017, of a Section 106 agreement providing obligations relating to a management agreement for the long-term maintenance of the open space on the site, a financial contribution of £132,976 towards education places, 25% on site affordable housing, and a financial contribution of £5,579 per dwelling if an equipped play area is not provided on site.

The agreement was not completed by the 12<sup>th</sup> November following delays on behalf of the Council as the Local Planning Authority in providing instructions, and accordingly it was considered appropriate by your Officer to agree an extension to the period within which the obligations can be completed by – to the 20<sup>th</sup> December.

There were further delays on behalf of the applicant and the County Council (as the education authority) and your Officer agreed to extend the time for the completion of the S106. Your Officer has again agreed to extend the time within which the agreement could be completed by - to the 1st May.

Some 62 weeks have now passed since receipt of the application.

**(4) Land North of Bradwell Hospital 17/00515/DEEM4**

This application, for outline planning permission for the erection of up to 85 dwellings, came before the Planning Committee on 10<sup>th</sup> October 2017 (at around week 16). The resolution of the Planning Committee included a time limit for the securing, by the 11<sup>th</sup> November 2017, of an agreement providing obligations relating to on-site affordable housing, and payment of contributions towards public open space and education facilities, and the monitoring of a travel plan.

The agreement was not completed by the 11<sup>th</sup> November 2017 due to delays on behalf of the Council as the Local Planning Authority in circulating a draft agreement, and accordingly it has been considered appropriate by your Officer to agree a number of further extensions to the period within which the obligations can be completed by.

The Education Authority have also recently raised an issue regarding the where the financial contribution should be spent and a report was taken to the 27<sup>th</sup> March 2018 Planning Committee at which it was resolved that the financial contribution should be spent at either the Sun Primary Academy or Bursley Primary Academy.

The agreement is now nearing completion and your officer has agreed to extend the period within which the Section 106 agreement may be completed, to the 23<sup>rd</sup> April.

A further update will be given prior to the committee meeting on the 24<sup>th</sup> April

Some 42 weeks have now passed since receipt of the application.

**(5) Site of former Baptist Church, London Road, Newcastle 17/00162/FUL**

This application for full planning permission for the amendment of a scheme for flats on this site came before the Planning Committee at its meeting on the 12<sup>th</sup> September (at around week 28). The resolution of the Committee was that subject to

- (a) Your officer determining, on the basis of a new financial assessment by the DVS, that the development still cannot finance all or part of any policy compliant contributions to offsite affordable housing provision and public open space; and

- (b) subject to the applicant entering into a Section 106 obligation by agreement by 30<sup>th</sup> October, to provide such policy compliant contributions as can be afforded and requiring in the event of substantial commencement of the development (as defined in the previously entered into Section 106 agreement) not being achieved within 18 months of the date of the permission, a financial reappraisal of the scheme to assess its ability at that time to fund full policy compliant contributions to offsite affordable housing provision and public open space, and the making of such contributions as are financially viable the application (17/00162/FUL) was to be permitted.

Following a review of the District Valuer's report and your officer reaching a view on the financial position a deadline for the completion of the agreement was agreed of the 13<sup>th</sup> December 2017. The agreement was subsequently completed on the 19<sup>th</sup> December and the decision notice on the application was issued 'in time' on the 22<sup>nd</sup> December.

The decision was issued in this case some 32 weeks after receipt of the application.

#### (6) Land Bound By Rycroft, Ryebank, Merrial Street 17/00637/FUL

This application for full planning permission for demolition of existing buildings and construction of a mixed use development of student accommodation, retail and commercial units and associated car parking originally came before the Planning Committee at its meeting on the 7<sup>th</sup> November (at around week 15). The resolutions of the Committee inter alia required obligations be entered into securing a financial contributions of; at least £542,797 to public realm improvements with the remainder (being at least £250,000) to be spent on the enhancement of public open space at Brampton Park or Queen Elizabeth Gardens, £2,245 towards travel plan monitoring; Real Time Passenger Information system for bus services; improvements to the cycle route from Newcastle town centre to Keele University; Real Time Town Centre Car Parking Capacity Information System; to review and provide/amend traffic regulation and Resident Parking Zones in the event that it has been demonstrated (through surveys secured by condition) that the development has resulted in on street parking problems. The resolution included the requirement that the agreement containing these obligations should be completed by the 8<sup>th</sup> January 2018.

However a further report came back to the Planning Committee on the 2nd February 2018 which set out that it is not legally possible for the Council to enter into an agreement with itself. Therefore the resolution of the Planning Committee was that all parties should enter by 8th March 2018 into an Agreement under Section 111 of the Local Government Act 1972, which requires that a draft S106 Agreement (in the terms as per the resolution of Planning Committee on 7th November), annexed to the S111 Agreement, is entered into once the transfer of the site has taken place.

The 8<sup>th</sup> March was not achieved but considerable progress has been made by all parties and on this basis your Officer has agreed to extend the deadline for the completion of the agreement to the 8<sup>th</sup> May 2018.

Some 37 weeks have now passed since receipt of the application.

#### (7) Land South of Honeywall Lane 17/00514/OUT

This application, for outline planning permission for the erection of up to 35 dwellings came before the Planning Committee on 7<sup>th</sup> November (at around week 19). The resolution of the Planning Committee included a time limit for the securing, by the 10<sup>th</sup> December 2017, of planning obligations with respect to the provision of 25% on-site affordable housing and financial contributions towards off-site public open space and primary and secondary school places.

The date for the completion of the Section 106 agreement was always challenging given the timescales. However, further delays were encountered on both sides but more recently on behalf of the applicant regarding land ownership matters and land registry. These matters have still not been resolved but the agreement is almost ready to be completed once the land

registry matters are resolved. Therefore your Officer has agreed to allow a further extension to the deadline for the completion of the agreement to the 8th May 2018.

Some 41 weeks have now passed since receipt of the application.

(8) Site of Former Wrinehill Garage Main Road 17/00968/FUL

This application for full planning permission for the erection of 9 dwellings came before the Planning Committee at its meeting on the 27<sup>th</sup> February (at around week 12). The resolutions of the Committee inter alia required that an obligation to secure a financial contribution of £11,158 towards the maintenance and improvement of public open space. The resolution included the requirement that the agreement should be completed by the 16<sup>th</sup> March.

The date for the completion of the planning obligation by undertaking was always challenging given the timescales, the 16<sup>th</sup> March was not achieved. However, because the undertaking was nearing completion your Officer agreed to extend the time for the completion of the agreement, initially to the 28<sup>th</sup> March, and subsequently to the 6<sup>th</sup> April.

The undertaking was completed on the 4<sup>th</sup> April and the decision notice was issued “out of time” on the 10<sup>th</sup> April 2018.

The decision was issued in this case some 18 weeks after receipt of the application.

(9) 58 Abbots Way, Westlands 17/00906/FUL

This application for full planning permission for a single dwelling came before the Planning Committee at its meeting on the 1st February (at around week 11). The resolutions of the Committee inter alia required that an obligation to secure a financial contribution of £5,579 towards the maintenance and improvement of public open space. The resolution included the requirement that the agreement should be completed by the 28<sup>th</sup> February.

The date for the completion of the S106 obligation by undertaking was always challenging given the timescales and your Officer agreed a revised date of the 14<sup>th</sup> March to allow more time for the submission and completion of the undertaking. Further delays were experienced due to problems establishing ownership of the property and this resulted in the applicant withdrawing the planning application on the 13<sup>th</sup> March 2018.

Some 16 weeks from receipt had passed when the application was formally withdrawn.

Date Report prepared

12<sup>th</sup> April 2018